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FEDERAL ELECTION COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Green Party of Luzerne County, PA and)
Shane Novak in his official capacity as Treasurer)
Carl Romanelli for U.S. Senate and)
Shane Novak in his official capacity as Treasurer)
Carl Romanelli)

MUR 5783

SENSITIVE

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

(1) Find reason to believe that Green Party of Luzerne County, PA and Shane Novak, in his official capacity as Treasurer ("GPL"), violated 2 U.S.C. § 441a(a)(1), (8) and 11 C.F.R. §§ 102.8(a), 110.6(b)(2)(iii), (c)(1); (2) find reason to believe that Carl Romanelli for U.S. Senate and Shane Novak, in his official capacity as Treasurer ("Romanelli Committee"), violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2); (3) find reason to believe that GPL violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(b); (4) find reason to believe that the Romanelli Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(a), (b)(4); (5) find reason to believe that GPL violated 2 U.S.C. § 441b(a); _____

_____ (8) approve the

Factual and Legal Analyses; (9) and admonish Mr. Sweep's Cleaning Company.

II. INTRODUCTION

The complaint in this matter involves allegations that GPL made, and the Romanelli Committee and Romanelli accepted, excessive in-kind contributions in violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). The complaint also alleges that GPL improperly accepted excessive contributions earmarked for the Romanelli Committee.

Specifically, the complaint asserts that GPL was created and operated as a way to funnel earmarked contributions to the Romanelli Committee by financing ballot access initiatives for Romanelli during the 2006 election, and that GPL and the Romanelli Committee violated the Act by making and knowingly receiving excessive contributions.

Based on the available information, the Commission found reason to believe that: (1) GPL violated 2 U.S.C. § 441a(a)(1) by making, and the Romanelli Committee violated 2 U.S.C. § 441a(f) by knowingly receiving, excessive in-kind contributions; and (2) GPL violated 11 C.F.R. § 106.6(b)(1)(i) by improperly allocating administrative expenses attributable to one or more clearly identified federal candidates or, in the alternative, violated 11 C.F.R. §§ 102.5(a), 106.6(a), (c), and (e) by failing to use a minimum 50% allocation ratio and to pay allocable expenses from an allocation account or from the committee's federal account with reimbursement by the nonfederal account. See Commission Certification, dated May 9, 2007. The Commission further took no action at this time as to the allegations that GPL violated 2 U.S.C. § 441a(a)(1), (8) and 11 C.F.R. §§ 102.8(a) and 110.6(b)(2)(iii), (c)(1) by receiving contributions in excess of \$2,100 earmarked for the Romanelli campaign, failing to report those contributions as earmarked for that campaign, and failing to forward them to the campaign within 10 days, or that the Romanelli Committee violated 2 U.S.C. § 441a(f) by knowingly receiving excessive contributions in the form of earmarked contributions. *Id.*

The investigation consisted of issuing subpoenas to produce documents and orders to submit written answers. In addition, we conducted telephone interviews with respondents as well as other third party witnesses. The investigation has revealed that GPL paid \$87,748 to finance ballot access initiatives on behalf of numerous Pennsylvania Green Party candidates, including five federal candidates. As a result, GPL violated 2 U.S.C. § 441a(a)(1)(A) by making

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1 excessive in-kind contributions to the Romanelli Committee and Dave Baker, Greta Browne,
2 Derf Maitland, and Titus North, who were running for federal office in Pennsylvania in 2006. In
3 addition, GPL violated 2 U.S.C. § 441b(a) by accepting a prohibited corporate contribution, and
4 both GPL and the Romanelli Committee violated 2 U.S.C. § 434(b) by failing to accurately
5 disclose their activities in reports filed with the Commission. Furthermore, we found that GPL
6 accepted a contribution earmarked for the Romanelli Committee that it should have reported as
7 such under 2 U.S.C. § 441a(a)(8), and that the Romanelli Committee violated 2 U.S.C. § 441a(f),
8 as the earmarked contribution was also excessive under the Act. _____
9 _____
10 _____
11 _____

12 **III. RESULTS OF THE INVESTIGATION**

13
14 **A. GPL'S STRUCTURE AND RELATIONSHIP TO THE ROMANELLI**
15 **COMMITTEE**

16
17 According to Carl Romanelli, in 2000, a small group of local activists formed GPL,
18 located in Hanover Township, Pennsylvania. GPL registered with the Commission as a federal
19 political committee in May 2006. *See* GPL Statement of Organization, filed May 26, 2006.

20 GPL is affiliated with the Green Party of Pennsylvania ("GPPA"). Although GPPA
21 registered with the Commission in June 2006 as a political committee, *see* GPPA Statement of
22 Organization, filed June 13, 2006, it never sought qualification as a state party under 11 C.F.R.
23 § 100.14(a), and therefore, could not make coordinated party expenditures with the general
24 election campaigns of federal candidates under 11 C.F.R. § 109.30. In January 2007, GPPA
25 terminated its registration, and the Commission approved such termination in February 2007.

1 Carl Romanelli has been GPL's Co-Chair since 2001. He ran for U.S. Senate in 2006,
2 and his authorized committee, the Romanelli Committee, registered with the Commission in May
3 2006. See Romanelli Committee, Statement of Organization, filed May 31, 2006. In its
4 amended statement of organization, GPL reported that the Romanelli Committee was an
5 affiliated committee.¹ See GPL Amended Statement of Organization, filed July 6, 2006.

6 When Romanelli decided to run for U.S. Senate in 2006, he learned he needed more than
7 60,000 signatures to qualify for the ballot in Pennsylvania's general election and looked to the
8 party for assistance.² However, according to Romanelli, GPPA was disorganized and had lost
9 status as a party in Pennsylvania. Believing that GPL could assume the duties of the state party,
10 Romanelli approached GPPA officials, who agreed that GPL would conduct all ballot
11 qualification efforts for GPPA candidates. Supplemental Response of Carl J. Romanelli,
12 Attachment A, at 1.

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B. FUNDRAISING AND SPENDING FOR 2006 BALLOT QUALIFICATION

17 Romanelli led the efforts to finance the ballot access efforts. In the spring of 2006,
18 Romanelli issued nationwide press releases soliciting funds on behalf of GPPA candidates,
19

¹ Under 11 C.F.R. § 100.5(g)(5), no authorized committee can be affiliated with an entity that is not an authorized committee. Thus, GPL improperly listed the Romanelli Committee, the authorized committee for Romanelli's Senate campaign, as an affiliate in its amended Statement of Organization.

² Although Romanelli collected approximately 99,000 signatures, the Commonwealth Court of Pennsylvania ruled that the number of valid signatures fell 9,000 short of the total required and removed his name from the November ballot. See *In re: Nomination Paper of Marakay Rogers et al.*, 914 A.2d 451 (Pa. Commonw. Ct. 2006), *aff'd* 589 A.2d 503 (Pa. 2006); see also *Green Party Candidate is Off November Senate Ballot*, ROLL CALL, Oct. 5, 2006.

1 calling this plan his "brain child."³ From June through August 2006, GPL raised approximately
2 \$155,000 in contributions. *See Contributions Received by GPL, Attachment C.* Romanelli
3 credits the resulting press coverage for GPL's fundraising successes.

4 GPL received virtually all of its contributions from individuals, *see Contributions*
5 *Received by GPL*, with the exception of one \$2,000 contribution made by Mr. Sweep's Cleaning
6 Company ("Mr. Sweep's Cleaning Co."), a Pennsylvania corporation. Despite press reports
7 stating that contributors gave money to GPL to fund ballot access efforts on behalf of Romanelli,
8 none of the checks payable to GPL contained any explicit instructions or designations to use the
9 funds for the Romanelli Committee, _____
10 _____
11 _____

12 According to Romanelli, GPL hired JSM Inc. for petitioning services to obtain ballot
13 access for Pennsylvania Green Party candidates. Romanelli stated that he first heard about JSM
14 in 2004 when the company qualified Ralph Nader. In April 2006, he found contact information
15 for Jennifer Breslin, the Director and President of JSM, and called her about qualifying for the
16 Pennsylvania ballot. Breslin initially quoted a price of \$500,000 for obtaining signatures.
17 However, Romanelli doubted he could raise such funds, so the parties agreed to a "pay as you
18 go" arrangement, although there was no written agreement.⁴ Between June 5 and September 11,
19 2006, GPL paid approximately \$88,000 for petitioning services to JSM. *See GPL's*
20 *Disbursements to JSM, Inc., Attachment F.*

³ While respondents were unable to produce any of the press releases during discovery, Romanelli indicated that the press releases stated that funds were needed to obtain access for all Green Party candidates running for office in Pennsylvania and did not specify that funds would be used for his Senate race.

⁴ According to Breslin, JSM did not perform the petitioning services but retained a sub-contractor, YPM, LLC, to conduct the petitioning. As a result, although GPL wrote checks payable JSM, JSM transferred all funds to YPM.

1 Petitioning efforts focused on Romanelli; four House candidates, Dave Baker (2nd
2 District), Titus North (14th District), Greta Browne (15th District), and Derf Maitland (19th
3 District); and three non-federal candidates, Marakay Rogers (Governor), Christina Valente
4 (Lieutenant Governor), and Katrina Heycock (General Assembly). *See* Amended 2006 July
5 Quarterly Report, filed Aug. 27, 2006; Green Party of the United States, *Campaigns for House,*
6 *Senate to Watch in 2006*, available at www.gp.org/press/pr_2006-05-15.shtml; Nominating
7 Papers, Attachment E.

8 **C. REPORTING DISBURSEMENTS FOR BALLOT QUALIFICATION**

9 **1. 2006 July Quarterly Report**

10 In three different versions of its 2006 July Quarterly Report, GPL reported disbursements
11 of \$66,000 that were made to JSM in three different ways. *See* MUR 5783, First General
12 Counsel's Report at 3-4.

- 13 • In the first 2006 July Quarterly Report, filed July 16, 2006, GPL reported \$66,000 as
14 "Other Disbursements" on Line 29 and itemized the disbursements on Schedule B as
15 payments to JSM for ballot qualification on behalf of Carl Romanelli. The Romanelli
16 Committee's initial July Quarterly Report, filed July 16, 2006, reflects \$66,000 in in-kind
17 contributions that correspond with disbursements to JSM disclosed by GPL.
- 18 • In its Amended 2006 July Quarterly Report, filed Aug. 27, 2006, GPL reported \$66,000
19 on Line 25 as "Coordinated Party Expenditures," disclosing five separate payments of
20 \$13,200 on Schedule F as coordinated party expenditures on behalf of Romanelli and the
21 four other Green Party candidates, Baker, Browne, Maitland, and North. The Romanelli
22 Committee filed a corresponding amended July Quarterly Report on August 25, 2006
23 reflecting a \$13,200 contribution from GPL with the notation that this was for authorized
24 federal petitioning in the form of a coordinated party expenditure and a \$13,200
25 disbursement to GPL for a petition drive and voter outreach.
- 26 • In its second Amended 2006 July Quarterly Report, filed on Oct. 16, 2006, GPL reported
27 the \$66,000 in disbursements on Line 21 as "Operating Expenditures" allocating \$4,620
28 for federal activity and \$61,380 for non-federal activity. GPL attached a Schedule H4,
29 which disclosed five disbursements of \$13,200 for allocated federal and non-federal
30 activity.

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1 GPL claims that it followed Commission advice in filing amendments for its 2006 July
2 Quarterly Report. However, while it appears that GPL's treasurer, Shane Novak, had six
3 documented telephone conversations with the Commission's Reports Analysis Division
4 ("RAD") concerning the proper way to report the \$66,000 in disbursements in GPL's 2006 July
5 Quarterly Report, none of the ways that GPL reported the expenditures is consistent with RAD's
6 guidance. After receiving notice of the complaint in this matter, on August 23, 2006, Novak
7 called RAD and stated that he thought that the disbursements to JSM should actually have been
8 reported as coordinated party expenditures on behalf of Romanelli. In response, RAD informed
9 Novak that GPL should have obtained written approval from a state or national party committee
10 prior to making any coordinated expenditures, but that it was the committee's responsibility to
11 determine whether the expenditures were coordinated. Approximately six weeks later, after
12 receiving a Request for Additional Information stating that GPL must have been authorized to
13 make coordinated party expenditures by state or national committee of political party, Novak
14 claimed that GPL had approval from GPPA since 2001 to conduct petitioning on behalf of Green
15 Party candidates. RAD informed Novak that GPPA was not a registered political committee
16 with the Commission until June 2006.

17 _____
18 _____
19 _____
20 _____ Romanelli stated that an attorney advised that the
21 agreement was legal, but was unable to provide a written opinion or an affidavit to document the
22 advice. GPL has provided no other documentation demonstrating that the state party authorized
23 GPL to make coordinated party expenditures. Even if GPL had received authorization prior to

1 making the expenditures, the state party organization, GPPA, legally could not have assigned
2 authority to make coordinated party expenditures to GPL in the first place because GPPA was
3 not a qualified "state committee" under the Act. To qualify as a "state committee" as defined by
4 2 U.S.C. § 431(15) and 11 C.F.R. § 100.14(a), an organization must possess written
5 documentation showing that it is responsible for the day-to-day operation of a political party at
6 the state level, obtain ballot access for one or more federal candidates, and submit an advisory
7 request to the Commission. *See, e.g.*, AO 2002-10 (Green Party of Michigan); 1997-7 (Virginia
8 Reform Party). As GPPA never obtained qualification as a state committee from the
9 Commission, GPPA was unable to authorize GPL to make any coordinated party expenditures.

10 GPL next attempted to report the disbursements as allocable operating expenditures given
11 that some non-federal candidates benefited from GPL's ballot qualification efforts.⁵ After filing
12 a second amended July Quarterly Report on October 16, 2006, Novak called RAD to inquire
13 about his latest amendments. RAD explained that unless GPL had a non-federal account, it
14 should not be making any entries in Schedule H4 reflecting allocable expenditures. Further,
15 RAD stated that if GPL's expenditures were benefitting any federal candidates and were in-kind
16 contributions, Novak should report the expenditures as contributions to federal candidates on
17 Line 23 of the report and that Novak would probably be hearing from the FEC again.

18 **2. 2006 October Quarterly Report**

19 GPL filed its 2006 October Quarterly Report on October 15, 2006 and reported \$34,000
20 in disbursements to JSM between July and August 2006 as coordinated party expenditures made
21 on behalf of federal candidates Maitland, Baker, and North. However, it did not report two

⁵ Novak also claims that he called the Commission's Information Services Division and, when he explained the purpose of his \$66,000 expenditure, was informed that the expenditures should be reported as operating expenditures. However, Novak was unable to substantiate his claim as the Information Services Division does not keep records of phone conversations with the public.

additional disbursements, totaling \$9,748, made by to JSM on August 31, 2006 and September 11, 2006.

IV. LEGAL ANALYSIS

A. EXCESSIVE IN-KIND CONTRIBUTIONS

The Act provides that an "expenditure" is a "purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal Office." 2 U.S.C. § 431(9)(A)(i). The Act also provides that a "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). The Commission has previously determined that expenses incurred in gathering signatures to qualify for a ballot for federal office are expenditures. *See* MUR 5581 (Nader for President 2004), Factual and Legal Analysis at 3; AO 2006-20 (Unity 08) at 3. If a third party pays for such expenses and coordinates the petitioning efforts with a federal candidate, then the expenditures constitute in-kind contributions to the candidate. *See* MUR 5581, F&LA at 3; MUR 5533 (Nader for President 2004), Statement of Reasons at 2.

Given Romanelli's personal involvement in soliciting and spending \$88,000 for GPL's ballot qualification efforts for Pennsylvania Green Party candidates and his discussions with Baker, Browne, Maitland, and North, GPL made in-kind contributions of \$11,000 to each of these candidates.⁶ Because GPL was subject to the \$2,100 contribution limit to each federal candidate during the 2006 election cycle, the in-kind contributions made to each candidate exceeded the \$2,100 limit by \$8,900. Therefore, GPL violated 2 U.S.C. § 441a(a)(1)(A) and 11

⁶ Because none of the witnesses interviewed could provide an exact percentage of resources devoted to each candidate, we divided the expenditure of \$88,000 equally among five federal and three non-federal candidates identified through the investigation. *Cf.* 11 C.F.R. § 106.1(a) (providing that expenditures made on behalf of one or more clearly identified federal candidate should be attributed based on the benefit that reasonably expected to be derived).

1 C.F.R. § 110.1(b) by making excessive contributions totaling \$44,500 to the five federal
2 candidates.

3 Under 2 U.S.C. § 431(2), an individual becomes a "candidate" for federal office when he
4 or she accepts \$5,000 in contributions or makes \$5,000 in expenditures. *Id.* Once an individual
5 becomes a candidate, the candidate must register and report with the Commission. *See* 2 U.S.C.
6 §§ 432(e), 433, and 434. While candidates Baker, Browne, Maitland, and North each received
7 in-kind contributions approximately worth \$11,000 from GPL, the investigation indicated that
8 unlike the Romanelli Committee, none of these candidates likely raised or spent \$5,000 outside
9 of the ballot qualification assistance provided by GPL.

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13 **B. RECEIPT OF CORPORATE CONTRIBUTION**

14 The Act prohibits a political committee from knowingly receiving a contribution from a
15 corporation. 2 U.S.C. § 441b(a). Although the Commission previously did not find reason to
16 believe that GPL violated section 441b(a), we discovered that GPL received one \$2,000
17 contribution check from Mr. Sweep's Cleaning Co., a Pennsylvania corporation. Accordingly,
18 we recommend that the Commission find reason to believe that GPL violated 2 U.S.C. § 441b(a)
19 by accepting a prohibited corporate contribution. Given that the investigation reveals that only
20 one small dollar transaction was in issue, we recommend that the Commission take no action
21 other than admonishing Mr. Sweep's Cleaning Co. for violating 2 U.S.C. § 441b(a) by making a
22 prohibited corporate contribution.⁷

⁷ Pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), the Commission exercises its prosecutorial discretion and generally does not pursue matters where the civil penalty would fall below \$1,000. *See, e.g.*, MUR 5632 (Iosco

C. REPORTING VIOLATIONS

The Act requires the treasurer of a political committee to file reports of receipts and disbursements. 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1. The reports must accurately reflect the receipts and disbursements of the committee. 2 U.S.C. § 434(b)(2), (3). The Commission previously did not make reason to believe findings concerning reporting violations under 2 U.S.C. § 434(b). However, we believe that the investigation provides a sufficient basis for the Commission to find that there is reason to believe that Respondents violated 2 U.S.C. § 434(b) by failing to accurately report their activities.

1. Green Party of Luzerne County

As discussed above, the \$88,000 in disbursements that GPL made to JSM were in-kind contributions to eight Green Party candidates, who were running for federal and state offices in Pennsylvania. *See supra* Section IV.A. In June 2006, GPL made two disbursements to JSM, a payment of \$24,000 on June 5, 2006 and \$20,000 on June 20, 2006, totaling \$44,000. *See* Chart of JPL's Disbursements to JSM, Inc. Given that the disbursements were used on behalf of eight Green Party candidates, GPL should have divided each disbursement or check equally by eight. For amounts attributable to the five federal candidates, GPL should have reported \$27,500 on Line 23 for "Contributions to Federal Candidates/Committees." For amounts attributable to the three non-federal candidates, GPL should have reported \$16,500 on Line 29 for "Other Disbursements." In addition, GPL should have itemized these disbursements as in-kind contributions on Schedule B.⁸

County Republican Party) (dismissing an allegation where advertisement at issue failed to include proper disclaimer due to nominal amount that respondent paid for advertisement and its limited federal activity); *see also* MUR 5563 (Kirk Shelmerdine Racing LLC), Statement of Reasons of Commissioner David M. Mason at 2 (describing matters where conciliation is not worthwhile due to low civil penalty).

⁸ In reviewing disclosure reports, when a political committee pays a vendor for services or goods on behalf a candidate committee, RAD treats the committee's payment as an in-kind contribution to the candidate only at the

Between July and September 2006, GPL made six disbursements to JSM, totaling \$43,748. See Chart of GPL's Disbursements to JSM, Inc. In the subsequent 2006 October Quarterly Report, by dividing these disbursements equally among the eight candidates, GPL should have reported \$27,312.50 on Line 23 for "Contributions to Federal Candidates/Committees." For amounts attributable to the three non-federal candidates, GPL should have reported \$16,405.50 on Line 29 for "Other Disbursements." As it did for the July Quarterly Report, GPL should have filed a Schedule B itemizing each disbursement as an in-kind contribution.

However, GPL failed to properly disclose the in-kind contributions by reporting \$66,000 in disbursements to JSM as "Other Disbursements" on Line 29, "Coordinated Party Expenditures" on Line 25, and "Operating Expenditures" on Line 21 in the three versions of the 2006 July Quarterly Reports filed with the Commission. See *supra* Section III.C. In its 2006 October Quarterly Report, GPL again failed to properly disclose its disbursements to JSM by reporting \$34,000 as coordinated party expenditures. Accordingly, we recommend that the Commission find reason to believe that GPL violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(b).

2. Carl Romanelli for U.S. Senate

For reporting purposes, the receipt of an in-kind contribution must be disclosed as a contribution on Schedule A as well as an expenditure on Schedule B to avoid inflating cash on

time the candidate receives the benefit. Thus, if GPL pre-paid for petitioning services in June but JSM did not conduct the petitioning until July, then GPL should have reported the payment to JSM as an operating expenditure in the July Quarterly Report and reported the payment as an in-kind contribution in the subsequent October Quarterly Report. To avoid inflating disbursements made, GPL would have to enter a negative amount for operating expenditures in the October Quarterly Report. Although none of the individuals interviewed during the investigation could recall the exact dates the petitioning occurred, the investigation suggests that the payments closely coincided with the petitioning and that, as a result, GPL could have reported the disbursements to JSM as in-kind contributions in the same reporting period that the payments to JSM were actually made.

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1 hand. *See* 11 C.F.R. § 104.13(a). The investigation revealed that GPL's payments totaling
2 \$11,000 to JSM for ballot qualification efforts were in-kind contributions to the Romanelli
3 Committee. By disclosing a contribution on Schedules A and B in its Amended 2006 July
4 Quarterly Report, the Romanelli Committee used the correct approach to report the contribution,
5 yet the Committee still made some errors. First, the Romanelli Committee reported receiving
6 one \$13,200 in-kind contribution when it should have disclosed receiving a series of
7 contributions totaling \$11,000 between June through September 2006.⁹ Second, the Romanelli
8 Committee erroneously noted that the purpose of the in-kind contribution was for coordinated
9 party expenditures, in violation of 11 C.F.R. § 104.3(b)(4). Accordingly, we recommend that the
10 Commission find reason to believe that the Romanelli Committee violated 2 U.S.C. § 434(b) and
11 11 C.F.R. § 104.3.

12 **D. EARMARKING**

13 The Act provides that all contributions made by a person, either directly or indirectly, on
14 behalf of a particular candidate, including contributions that are in any way earmarked or
15 otherwise directed through an intermediary or conduit to such candidate, shall be treated as
16 contributions from such person to such candidate. *See* 2 U.S.C. § 441a(a)(8).¹⁰ An earmarked
17 contribution is one that contains a direct or indirect designation, instruction, or encumbrance by
18 the contributor to a conduit or intermediary that results in all or any part of the funds being

⁹ The Romanelli Committee could not provide factual support for the receipt of a \$13,200 in-kind contribution. Although we do not have definitive information that the Romanelli Committee in fact received \$11,000 in in-kind contributions, we believe that in the absence of information showing a different distribution of expenditures, the methodology dividing the \$88,000 equally among eight Green Party candidates, *see supra* note 7, was the most reasonable for reporting purposes.

¹⁰ *See also* MURs 4831 and 5274 (Nixon) (finding probable cause to believe that: (1) the Missouri Democratic State Committee violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8(a), 110.6(b)(2), (c)(1) by accepting earmarked contributions and failing to forward and report such contributions; and (2) the Nixon Campaign Fund violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2) by accepting excessive contributions that were earmarked and failing to report such contributions).

1 contributed to or expended on behalf of a clearly identified candidate. *See* 11 C.F.R.
2 § 110.6(b)(1).

3 While earmarking is permissible if it does not result in excessive or prohibited
4 contributions, a pass-through committee must file a conduit report for the earmarked
5 contributions, and forward them to the campaign no later than 10 days after receipt. *See* 2 U.S.C.
6 § 441a(a)(8); 11 C.F.R. §§ 102.8(a), 110.6(b)(2)(iii) and 110.6(c)(1). The recipient candidate or
7 authorized committee shall report each conduit or intermediary who forwards an earmarked
8 contribution which in the aggregate exceeds \$200 in any calendar year. 11 C.F.R. § 110.6(c)(2).
9 Even if reported and forwarded correctly, the contributor and the recipient committee will have
10 violated 2 U.S.C. §§ 441a(a)(1) and 441a(f), respectively, if the earmarked contributions exceed
11 the applicable contribution limits.

12 In recent enforcement matters, the Commission has concluded that funds have been
13 earmarked only where there is clear documented evidence of acts by donors that resulted in their
14 funds being used by the recipient committee for expenditures on behalf of a particular
15 campaign.¹¹ The Commission has routinely rejected allegations that rely on purely
16 circumstantial information and that fail to set forth information demonstrating a clear designation
17 or instruction given by the donor.¹²

¹¹ In MURs 4831 and 5274, the Commission determined that funds donated to the Missouri Democratic State Committee were earmarked for the U.S. Senate campaign of Jeremiah Nixon where contributors' checks had memo lines that stated "Nixon," "Nixon-Win," "J. Nixon Fund," and "Jay Nixon Campaign Contribution," but not where the contributions resulted from party solicitations suggesting support for Nixon or merely coinciding with support provided to his campaign. *See also* MUR 5520 (Republican Party of Louisiana) (concluding that a newspaper article describing the party's "wink and a nod" arrangement with donors, with no other designation or instruction by the donor, insufficient to find reason to believe earmarking occurred).

¹² *See* MUR 5732 (Matt Brown for U.S. Senate) (finding no earmarking where checks to state party committees lacked cover letters or accompanying instructions and contained no designations, instructions, or encumbrances to use the funds on behalf of candidate committee, despite media reports suggesting a deal among state committees); MUR 5445 (Davis) (finding no earmarking occurred where a donor who had maximized contributions to Davis made contributions to six non-candidate committees, each of which then made donations to Davis within nine days, because there was no designation or instruction); MUR 5125 (Perry) (finding no earmarking because the complaint

1 _____
2 _____
3 _____ Although the check itself does not specifically name Carl Romanelli,
4 Romanelli was the only known Green Party candidate running for U.S. Senate in June 2006 at
5 the time the donor issued the check.¹³ Section 110.6(b)(1) only requires that a designation
6 "result" in a contribution to a clearly identified candidate, not that a designation itself must
7 contain the name of a clearly identified candidate. Because Romanelli was the only known
8 Green Party candidate running for U.S. Senate, the memo entry represents a designation by the
9 donor that resulted in a contribution to a clearly identified candidate, _____ was an
10 earmarked contribution under 11 C.F.R. § 110.6(b)(1). Furthermore, because this earmarked
11 contribution to the Romanelli Committee was worth \$5,000, it exceeded the \$2,100 contribution
12 limit that a person can make to an authorized committee under 2 U.S.C. § 441a(a)(1).

13 According to Novak, _____ was deposited into GPL's bank account and never
14 forwarded to the Romanelli Committee or reported as an earmarked contribution as required by
15 the Act. Moreover, the Romanelli Committee, as the recipient committee, did not report the
16 receipt of the earmarked contribution pursuant to 11 C.F.R. § 110.6(c)(2), even though
17 Romanelli solicited this contribution to GPL to obtain ballot access for himself and other Green
18 Party candidates, and Romanelli and Novak were involved in both sides of the transaction. See
19 MUR 4831/5274 (Nixon Campaign Fund), Conciliation Agreement (holding candidate
20 committee liable for accepting and failing to report excessive, earmarked contributions where the

contained only bare allegations of earmarking, but showed no designation, instruction or encumbrance); MUR 4643 (Democratic Party of New Mexico) (finding no earmarking based only on correlation in timing and amounts of contributions, without other evidence of instruction, designation or encumbrance).

¹³ See, e.g., Carrie Budoff, *Santorum Not Conceding Environment*, PHILADELPHIA INQUIRER, June 6, 2006 (describing efforts to invite Green Party candidate Carl Romanelli to participate in an event, which included both Republican and Democratic candidates running for U.S. Senate in Pennsylvania in 2006).

1 candidate solicited contributions to the conduit committee and the conduit committee in turn
2 accepted checks bearing indicia of earmarking, which were not forwarded but used to fund
3 coordinated communications).

4 Based on the information described above, we recommend that the Commission find
5 reason to believe that GPL violated 2 U.S.C. § 441a(a)(1), (8) and 11 C.F.R. §§ 102.8(a),
6 110.6(b)(2)(iii), (c)(1) by making an excessive, earmarked contribution and failing to forward or
7 report such contribution. In addition, we recommend that the Commission find reason to believe
8 that the Romanelli Committee violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.(c)(2) by
9 knowingly accepting an excessive, earmarked contribution and failing to report such
10 contribution.

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General Counsel's Report #2

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General Counsel's Report #2

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8 **VI. RECOMMENDATIONS**

- 9 1. Find reason to believe that Green Party of Luzerne County, PA and Shane Novak, in
10 his official capacity as Treasurer, violated 2 U.S.C. § 441a(a)(1), (8) and 11 C.F.R.
11 §§ 102.8(a), 110.6(b)(2)(iii), (c)(1);
- 12 2. Find reason to believe that Carl Romanelli for U.S. Senate and Shane Novak, in his
13 official capacity as Treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R.
14 § 110.6(c)(2);
- 15 3. Find reason to believe that Green Party of Luzerne County, PA, and Shane Novak, in
16 his official capacity as Treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R.
17 § 104.3(b);
- 18 4. Find reason to believe that the Carl Romanelli for U.S. Senate and Shane Novak, in
19 his official capacity as Treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R.
20 § 104.3(a), (b)(4).

5. Find reason to believe that Green Party of Luzerne County, PA, and Shane Novak, in his official capacity as Treasurer, violated 2 U.S.C. § 441b(a);

9. Admonish Mr. Sweep's Cleaning Company;

11. Approve the attached Factual and Legal Analyses; and

12. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

7/7/08
Date

By:

Ann Marie Terzaken
Associate General Counsel
for Enforcement

Julie Kara McConnell
Assistant General Counsel

Jin Lee
Attorney

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J. Factual and Legal Analysis for Green Party of Luzerne County
K. Factual and Legal Analysis for Carl Romanelli for U.S. Senate

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